IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19923 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ABDUL RAUF @ SAUD HAJI HUSSAINBHAI BADAM - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MR MM TIRMIZI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MS HANSA PUNANI for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/10/2005

ORAL JUDGMENT

1.This petition is filed under Article 226 of the Constitution of India, challenging the order of detention dated 03.09.2005 by the District Magistrate,

Panchmahals, respondent No. 2 herein, detaining the detenue in exercise of powers under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), detaining the petitioner as a cruel person as defined under Section 2(bbb) of the Act as illegal, arbitrary, unreasonable and violative of Articles 21 & 22 of the Constitution of India.

2. The grounds supplied alongwith the order of detention on the same date reveals about the registration of crimes under the Bombay Animal Protection Act, 1954 vide II-C.R. No 348/05 and also under Section 269 of IPC and under Section 105, 117 of Bombay Police Act and also under Section 135 of the Electricity Act and under Section 207(2) of the Gujarat Municipalities Act, 1993. The criminal activities of the detenue are supported by the statements of two witnesses dated 29.08.2005, which specifically refer to the illegal supply and slaughter of animals by the petitioner and by such criminal activities, the feelings of the people of particular community is affected, which results into communal disturbances leading to the riots and therefore it becomes imperative for the detaining authority to

exercise powers under the Act. While passing the said order, the detaining authority has considered that no permission was obtained as required under Section 6 of the Bombay Animal Protection Act, 1954. It was concluded by the detaining authority that he is likely to continue similar activities in future also in the event of grant of bail by the competent Court for the offences registered against the detenue.

3. Learned advocate appearing for the petitioner Ms. Sahin Quresh for Mr. M.M. Tirmizi challenged the order of detention mainly on three grounds that the detaining authority has failed to apply his mind to the relevant aspects about the detenue who was granted police remand and no relevant or credible material had existed before the detaining authority to arrive at a subjective satisfaction that the detenue would be enlarged on bail and thereafter also, continue to engage in criminal activities. He has further submitted that statements are made by the witnesses on 29.08.2005 and the order of detention is passed on 03.09.2005, which shows mechanical approach of the detaining authority in verifying the same and independently, no inquiry is made by the detaining authority to ascertain about the

allegations and events as narrated by the witness analogous to the aforesaid submissions. He has further submitted that the claim under Sub-Section 2 of Section 9 is wrongly claimed. That non-supply of copy of an application for bail and also to supply copy of the order of Chief Judicial Magistrate granting remand of detenue by the detaining authority though asked by representation dated 20.09.2005 resulted into depriving the detenue of making effective and expeditious representation guaranteed under Article 22 of the Constitution of India.

4. She has placed reliance on the decisions in the case of **Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675** in support of her arguments about non-application of mind by the detaining authority about the police remand of detenue and ipsi dixit of the officer concerned to the fact about the detenue continuing similar illegal activities in future on grant of bail by the concerned Court. In support of her arguments about non-supply of vital documents of copy of the bail application and order of the learned Chief Judicial Magistrate about remand, she has placed

reliance on the decision of the **learned Single Judge dated 03.05.2005 in Special Civil Application No. 5890 of 2005 in the case of Vijay Ramlot Gupta Vs. the State of Gujarat** and about mechanical approach of the detaining authority qua the verification of the statements of witnesses, who have made statements on 29.08.2005.

5. Collectively, it was submitted that the order of detention impugned in this petition requires to be quashed and set aside.

6. The learned Asst. Govt. Pleader, Ms. Hansa Punani supported the order of detention and submitted that considering the registration of various crimes as reflected in the order of detention, and the statements of witnesses revealing that the activities of the petitioner is leading to the communal riots and that he is likely to continue similar activities in future also in the event of grant of bail by the competent Court for the offences registered against the detenue.

7. Considering the facts and submissions and on perusal of the record, I am inclined to accept the submissions

made by the learned Advocate for the petitioner and the order of detention is required to be quashed and set aside on the ground of subjective satisfaction of the detaining authority being vitiated due to lack of credible material not considered, while a conclusion was found that the detenue is likely to be enlarged on bail and would continue similar activities in future and therefore it has become imperative to exercise powers under the law.

8. In the present case, the detenue was in police remand and without considering the facts about the detenue preferred bail application, remand by the learned Chief Judicial Magistrate, which are relevant and necessary material for arriving on the said conclusion and therefore the order of detention is to be quashed and set aside.

9. The other grounds urged by the learned Advocate are equally worth considering but the order of detention is quashed and set aside on the first ground as alleged. Detailed discussion on the same is not necessary.

10. In view of the above, the order dated 03.09.2005

passed by the District Magistrate, Panchmahals, respondent No. 2 herein, is quashed and set aside and the detenue viz. Abdul Rauf @ Saud Haji Hussainbhai Badam is ordered to be set at liberty forthwith, if not required in connection with any other case by any other authority. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)

*bjoy